

HOUSE BILL 449

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2lr2458

By: **Delegate Morhaim**

Introduced and read first time: February 1, 2012

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Decisions by Surrogates – Donations of Nonvital Organs**

3 FOR the purpose of authorizing a person that is authorized to make health care
4 decisions for another under a certain provision of law to authorize the donation
5 of a nonvital organ of a patient under certain circumstances; providing for the
6 application of this Act; defining a certain term; and generally relating to health
7 care decisions by surrogates.

8 BY repealing and reenacting, without amendments,
9 Article – Health – General
10 Section 5–605(a)
11 Annotated Code of Maryland
12 (2009 Replacement Volume and 2011 Supplement)

13 BY adding to
14 Article – Health – General
15 Section 5–605(e)
16 Annotated Code of Maryland
17 (2009 Replacement Volume and 2011 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article – Health – General**

21 5–605.

22 (a) (1) In this subsection, “unavailable” means:

23 (i) After reasonable inquiry, a health care provider is unaware
24 of the existence of a health care agent or surrogate decision maker;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (ii) After reasonable inquiry, a health care provider cannot
2 ascertain the whereabouts of a health care agent or surrogate decision maker;

3 (iii) A health care agent or surrogate decision maker has not
4 responded in a timely manner, taking into account the health care needs of the
5 individual, to a written or oral message from a health care provider;

6 (iv) A health care agent or surrogate decision maker is
7 incapacitated; or

8 (v) A health care agent or surrogate decision maker is unwilling
9 to make decisions concerning health care for the individual.

10 (2) The following individuals or groups, in the specified order of
11 priority, may make decisions about health care for a person who has been certified to
12 be incapable of making an informed decision and who has not appointed a health care
13 agent in accordance with this subtitle or whose health care agent is unavailable.
14 Individuals in a particular class may be consulted to make a decision only if all
15 individuals in the next higher class are unavailable:

16 (i) A guardian for the patient, if one has been appointed;

17 (ii) The patient's spouse or domestic partner;

18 (iii) An adult child of the patient;

19 (iv) A parent of the patient;

20 (v) An adult brother or sister of the patient; or

21 (vi) A friend or other relative of the patient who meets the
22 requirements of paragraph (3) of this subsection.

23 (3) A friend or other relative may make decisions about health care for
24 a patient under paragraph (2) of this subsection if the person:

25 (i) Is a competent individual; and

26 (ii) Presents an affidavit to the attending physician stating:

27 1. That the person is a relative or close friend of the
28 patient; and

29 2. Specific facts and circumstances demonstrating that
30 the person has maintained regular contact with the patient sufficient to be familiar
31 with the patient's activities, health, and personal beliefs.

1 (4) The attending physician shall include the affidavit presented
2 under paragraph (3) of this subsection in the patient's medical record.

3 **(E) (1) IN THIS SUBSECTION, "NONVITAL ORGAN" MEANS:**

4 **(I) IF A PATIENT HAS TWO FUNCTIONING KIDNEYS, ONE**
5 **KIDNEY; OR**

6 **(II) A LOBE OF A LIVER.**

7 **(2) THIS SUBSECTION APPLIES ONLY TO A PATIENT WHO HAS**
8 **BEEN CERTIFIED UNDER § 5-606(B) OF THIS SUBTITLE TO BE IN A PERSISTENT**
9 **VEGETATIVE STATE.**

10 **(3) A PERSON AUTHORIZED TO MAKE HEALTH CARE DECISIONS**
11 **FOR ANOTHER UNDER THIS SECTION MAY AUTHORIZE THE DONATION OF A**
12 **NONVITAL ORGAN IF THE DONATION IS BASED ON:**

13 **(I) THE WISHES OF THE PATIENT AS PREVIOUSLY**
14 **EXPRESSED BY THE PATIENT; OR**

15 **(II) A DETERMINATION BY THE SURROGATE THAT THE**
16 **DONATION IS CONSISTENT WITH THE PATIENT'S RELEVANT RELIGIOUS AND**
17 **MORAL BELIEFS AND PERSONAL VALUES.**

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2012.